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(66)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2507 of 2005

PETITIONER : Jhadu Ram

VERSUS

RESPONDENTS : Chhattisgarh State Electricity Board & another

Post for order on 15th May, 2007

Sd/-
Satish K. Agnihotri
Judge

(67)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 2507 of 2005

PETITIONER : Jhadu Ram, son of Manglu Ram, aged about 79 yrs., shyama Nagar, Janakpur ward Kanker (C.G.)

VERSUS

RESPONDENTS : 1. Chhattisgarh State Electricity Board Through the Secretary, Raipur (Chhattisgarh)

2. Chhattisgarh State Electricity Board, Through the Executive Engineer, Raipur (Chhattisgarh).

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri.

Present: Shri H.B.Agrawal, Sr. Advocate with Shri J.K.Gupta, Advocate for the petitioner.
Shri P.S.Koshy, Advocate for the respondents.

ORDER

(Passed on .....15th.....day of May, 2007)

1. By this petition, the petitioner seeks a relief that the petitioner be granted pension after his taking services as daily wager into account for calculating the minimum qualifying 10 years in service to entitle the petitioner for grant of pension and gratuity also.

2. The indisputable facts, in nutshell, are that the petitioner was engaged in the service as daily wager from 24.9.1974. The petitioner was regularised w.e.f 24.12.1986. Thereafter, vide order dated 27.10.1990 (Annexure P/1), the petitioner was appointed as work charged driver temporarily on time scale of pay of Rs. 1090-1950. The petitioner retired from service w.e.f 25.03.1995 on attaining the age of superannuation. The petitioner was communicated letter dated 29.11.1995 (Annexure P/3) that the petitioner was not entitled to grant of pension as the petitioner has

not completed the minimum required 10 years for entitlement of pension.

3. Shri H.B.Agrawal, learned senior counsel appearing with Shri Pankaj Agrawal, would submit that the petitioner was engaged as daily wager w.e.f 24.09.1974. Admittedly, thereafter, the services of the petitioner was regularised w.e.f. 24.12.1986. Learned counsel further relied on an order dated 17.12.1984 passed by the Labour Court, wherein the Labour Court directed to reinstate the applicant with continuity of service on his former post. Thus, the petitioner is entitled to pension on counting his service as daily wager for the purpose of pension.

4. Per contra, Shri Koshy, learned counsel appearing for the respondents would submit that the respondent Board has adopted M.P./C.G. Civil Services (Pension) Rules, 1976 (*hereinafter referred to as "the Rules, 1976"*). As per the rule, the period spent by the petitioner as daily wager cannot be counted for his entitlement to pensionery benefits. The petitioner was regularised as Work Charged cleaner w.e.f 24.12.1986 and the petitioner retired on 25.03.1995. Thus the petitioner has not completed the minimum 10 years qualifying service as entitlement to pension.

5. I have heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the petitioner was not born in service till 24.12.1986 when he was regularised. Engagement of the petitioner on daily wages cannot be counted as service in the department. It is well settled principle of law that any appointment dehors the constitutional scheme of the employment and not in consonance with the provisions of law on daily wages, contract or temporary, is not legal and the employee does not acquire any right to continue in service and other benefits of the regular service.

6. With regard to the contention of the learned counsel appearing for the petitioner that the Labour Court, vide order dated 17.12.1984

directed the reinstatement of the petitioner with continuity of service on the former post. It is clear that the Labour Court has directed to reinstate the services of the petitioner on daily wages on his former post and the said service cannot be counted as regular service.

7. Sub Rule (2) of Rule 12:- *Commencement of qualifying service,* read with Sub Rule (2) of Rule 43:- *Amount of Pension,* of the M.P. Civil Services (Pension) Rules, 1976, reads as under:

> "Rule 12 (1) xxx xxx xxx xxx
> (2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity."
>
> Rule 43 (1) xxx xxx xxx xxx
> (2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than 10 years, the amount of pension shall be appropriate amount as set out below, namely:- ....."

8. On perusal of the relevant provisions of Pension Rules, 1976, the qualifying service for grant of pension and other retiral benefits is 10 years. Admittedly, the petitioner was regularised on his service w.e.f 24.12.1986 and the petitioner retired on 25.3.1995. The petitioner is thus not entitled to pension under the provisions of Pension Rules, 1976.

9. The petitioner has approached this Court not immediately after retirement from service i.e. 25.03.1995. The petitioner has slept over his right and approached this Court after a period of about 10 years with unexplained, inordinate delay.

10. The Supreme Court, in ***Burn Standard Co. Ltd. & Others Vs. Dinabandhu Majumdar & another***[1] observed as under:

> "The very conduct of non-raising of an objection in the matter by the employee, in our view, should be sufficient reason for the High Court,

not to entertain such applications on grounds of acquiescence, undue delay and laches."

11. The Supreme Court, in ***Karnataka Power Corporation Ltd. through its Chairman & Managing Director & another Vs. K.Thangappan & another***[2] observed as under:

> "Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, cause prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in the Durg Prasad V. Chief Controller of Imports and exports. Of course, the discretion has to be exercised judicially and reasonably."

12. The High Court, in exercise of its discretion, does not ordinarily assist the tardy and the indolent and the acquiescent and the lethargic as the belated approach may certainly breach the rights of others.

13. Looking from all angles, this petition has no merit and is accordingly dismissed.

Sd/-
Satish K. Agnihotri
Judge

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1. (1995) 4 SCC 172
2. (2006) 4 SCC 322

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